IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10547 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DILIP @ DILLU LALCHANDBHAI SANSI

Versus

STATE OF GUJARAT

Appearance:

MR YATIN SONI for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/03/2000

ORAL JUDGEMENT

#. District Magistrate, Dahod, passed an order on August 23, 1999 in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the detenue under the provisions of the PASA Act.

#. The grounds of detention indicate that the detaining authority took into consideration three offences registered against the detenue for theft and came to conclusion that the petitioner is a dangerous person. The detaining authority also considered the statements of two anonymous witnesses whose identity has not been disclosed by the detaining authority in exercise of powers under section 9(2) of the PASA Act. The detaining authority recorded subjective satisfaction about the correctness of the incidents and genuineness of the fear expressed by the witnesses and came to a conclusion that the identity is required to be not disclosed. The authority also concluded that the less drastic remedy is not possible to be resorted to and the petitioner is required to be detained immediately in order to prevent him from continuing his illegal and anti-social activities.

#. The petitioner challenges the order of detention by this petition under Article 226 of the Constitution of India on various grounds. However, Mr. Soni has placed reliance only on the ground of improper exercise under section (2) of the PASA Act/ or non application of mind on the part of the detaining authority. Mr. Soni submitted that the statements of anonymous witnesses have not been verified by the detaining authority personally and therefore, the exercise of powers under section 9(2) is improper. He submitted that in the grounds of detention, the detaining authority states that the statements have been personally verified which is not correct and therefore, it is non application of mind while passing the order. For both these reasons, the order would stand vitiated. The petition may therefore, be allowed.

#. Mr. K.T.Dave, learned AGP has opposed this petition. He however, concedes that from the dates it is clear that the statements of anonymous witnesses are not in fact verified by the detaining authority i.e. the District Magistrate, Dahod although they appear to have been verified by the Dy.S.P. Dahod and Additional District magistrate, Dahod.

#. Considering the rival side contentions, it is clear that the statements of anonymous witnesses have not been personally verified by the detaining authority. So far as the verification by the Dy.S.P. is concerned, it is referred to in the grounds of detention and so far as the verification by the Additional Magistrate is concerned, it finds no place in the grounds of detention. The order

would therefore, suffer from multiple defects, first being that there is non-application of mind on the part of the detaining authority to the extent that inspite of the absence of personal verification, it is stated in the grounds of detention that the statements of anonymous witnesses are personally verified by the detaining authority. Secondly, there is no reference to verification by the Additional District Magistrate who is a different officer than the detaining authority namely, the District Magistrate and Dy.S.P.. This aspect is not considered by the detaining authority. The exercise of powers under section 9(2) of the PASA Act, by the detaining authority would, therefore, stand vitiated. There is absence of subjective satisfaction about the genuineness of the fear expressed by the anonymous witnesses qua the petitioner and the need for exercise of powers under section 9(2) of the PASA Act. It is not the case that the verification by Additional District Magistrate was at the behest of detaining authority since the grounds of detention do not indicate any such averment. The order of detention based on such defective satisfaction cannot be sustained. The petition therefore, deserves to be allowed on this ground.

#. The petition is allowed. The impugned order of detention dated August 23, 1999 is hereby quashed and set aside. The detenue - Dilip @ Dillu Lalchandbhai Sansi, is hereby ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L.DAVE, J.]

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